

1 The Honorable Thomas S. Zilly
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 DIBAKAR BARUA, Individually and on
10 Behalf of All Others Similarly Situated,

11 Plaintiff,

12 v.

13 ZILLOW GROUP, INC., RICHARD
14 BARTON, ALLEN PARKER, and JEREMY
WACKSMAN,

15 Defendants.

16 STEVEN SILVERBERG, Individually and
on Behalf of All Others Similarly Situated,

17 Plaintiff,

18 v.

19 ZILLOW GROUP, INC., RICHARD
20 BARTON, ALLEN PARKER, and JEREMY
WACKSMAN,

21 Defendants.

22 AARON WINSTON HILLIER, Individually
and on Behalf of All Others Similarly
Situated,

23 Plaintiff,

24 v.

25 ZILLOW GROUP, INC., RICHARD
26 BARTON, ALLEN PARKER, and JEREMY
WACKSMAN,

27 Defendants.

Civil Action No. 2:21-CV-01551-TSZ

**MOTION OF LEE MCCORMICK FOR
CONSOLIDATION OF RELATED
ACTIONS, APPOINTMENT AS LEAD
PLAINTIFF, AND APPROVAL OF
COUNSEL**

NOTE ON MOTION CALENDAR:
February 4, 2022

ORAL ARGUMENT REQUESTED
Civil Action No. 2:21-cv-01567-TSZ

Civil Action No. 2:22-cv-00014-TSZ

MOTION

Lead Plaintiff Movant Lee McCormick (“McCormick”) respectfully moves this court, pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), for entry of an order: (i) consolidating the above-captioned actions; (ii) appointing McCormick as Lead Plaintiff; (iii) approving McCormick’s selection of Glancy Prongay & Murray LLP as Lead Counsel and Rossi Vucinovich, P.C. as Liaison Counsel for the Class; and (iv) granting such other and further relief as the Court may deem just and proper. This motion is noted on the Court’s motion calendar for February 4, 2022, before the Honorable Thomas S. Zilly, located at the United States Courthouse, 700 Stewart Street, Suite 15229, Seattle, WA 98101-9906. McCormick respectfully requests oral argument.

This Motion is made on the grounds that McCormick believes that he is the “most adequate plaintiff” under the PSLRA and should therefore be appointed Lead Plaintiff. Specifically, McCormick believes that he has the “largest financial interest” in the relief sought by the Class in this action by virtue of, among other things, the significant losses that he incurred on his investments in the securities of Zillow Group, Inc. (“Zillow” or the “Company”). McCormick also otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”) because his claims are typical of other Class members’ claims and because it will fairly and adequately represent the interests of the Class.

In support of this Motion, McCormick submits the accompanying memorandum of law submitted herewith, the Declaration of Benjamin T.G. Nivison (“Nivison Decl.”) and the exhibits attached thereto, and all of the prior pleadings and other files in this matter, and such other written or oral arguments as may be permitted by the Court.

1 MEMORANDUM OF LAW

2 I. PRELIMINARY STATEMENT

3 The above-captioned actions are securities class actions brought on behalf of all persons
 4 who purchased or otherwise acquired Zillow securities between August 7, 2020 and November 2,
 5 2021, inclusive (“Class Period”).

6 The Private Securities Litigation Reform Act of 1995 (“PSLRA”) provides that the Court
 7 shall appoint the “most adequate plaintiff”—the plaintiff most capable of adequately representing
 8 the interests of Class members—as lead plaintiff. Pursuant to the PSLRA, the plaintiff or movant
 9 with the largest financial interest in the relief sought by the Class who otherwise satisfies the
 10 requirements of Rule 23 of the Federal Rules of Civil Procedure is presumed to be the most
 11 adequate plaintiff. This motion is made on the grounds that McCormick is the “most adequate
 12 plaintiff” as defined by the PSLRA.

13 McCormick has “the largest financial interest in the relief sought by the class” as a result
 14 of defendants’ wrongful conduct as alleged in this action. In addition, for purposes of this motion,
 15 McCormick satisfies the relevant requirements of Rule 23 of the Federal Rules of Civil Procedure,
 16 as his claims are typical of other Class members’ claims, and he is committed to fairly and
 17 adequately representing the interests of the Class. Thus, pursuant to the PSLRA’s lead plaintiff
 18 provision, McCormick respectfully submits that he is presumptively the most adequate plaintiff
 19 and should be appointed as lead plaintiff for the Class. Additionally, McCormick’s selection of
 20 GPM as Lead Counsel for the Class should be approved because the firm has substantial expertise
 21 in securities class action litigation and the experience and resources to efficiently prosecute this
 22 action.

23 II. FACTUAL BACKGROUND¹

24 Zillow is a real estate company that purports to offer customers “an on-demand experience
 25 for selling, buying, renting or financing with transparency.” The Company’s “Zillow Offers”

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27 ¹ This section has been adapted from the complaints filed in the above-captioned actions.

1 business “buys and sells homes directly in dozens of markets across the country, allowing sellers
 2 control over their timeline.” The Company directly purchases homes from sellers, makes certain
 3 repairs and updates to these properties, and subsequently resells the homes to purchasers.

4 On October 4, 2021, analysts from RBC Capital Markets lowered their price target for the
 5 Company, warning that Zillow Offers would likely miss quarterly expectations. On this news,
 6 Zillow’s Class A share price fell \$5.72, or more than 6%, to close at \$85.68 per share on October
 7 4, 2021, and its Class C share price fell \$4.98, or about 5.5%, to close at \$85.38 per share on
 8 October 4, 2021.

9 Then, on October 18, 2021, the Company announced that Zillow Offers suspended signing
 10 of new contracts through 2021 and would focus on its current inventory, citing “a backlog in
 11 renovations and operational capacity restraints.” Zillow claims that “[p]ausing new contracts will
 12 enable us to focus on sellers already under contract with us and our current home inventory.” On
 13 this news, Zillow’s Class A share price fell \$8.84, or 9.4%, to close at \$85.46 per share on October
 14 18, 2021, and its Class C share price fell \$8.97, or 9.4%, to close at \$86.00 per share on October
 15 18, 2021.

16 Then, on November 1, 2021, media outlets reported that most of the homes in Zillow
 17 Offers’ inventory were now worth less than the Company paid for them and that Zillow was
 18 looking to sell off 7,000 homes. On this news, Zillow’s Class A share price fell \$20.24, or more
 19 than 19%, to close at \$85.48 per share on November 2, 2021, and its Class C share price fell
 20 \$16.43, or nearly 16%, to close at \$87.20 per share on November 2, 2021.

21 Then, on November 2, 2021, after the market closed, Zillow announced that it would wind-
 22 down Zillow Offers because “the unpredictability in forecasting home prices far exceeds what we
 23 anticipated and continuing to scale Zillow Offers would result in too much earnings and balance-
 24 sheet volatility.” As a result, third quarter 2021 financial results included “a write-down of
 25 inventory of approximately \$304 million within the Homes segment as a result of purchasing
 26 homes in Q3 at higher prices than the [C]ompany’s current estimates of future selling prices.”
 27 Moreover, the “[C]ompany further expects an additional \$240 million to \$265 million of losses to

1 be recognized in Q4 primarily on homes it expects to purchase in Q4.” On this news, Zillow’s
 2 Class A share price fell \$19.62, or 23%, to close at \$65.86 per share on November 3, 2021, and its
 3 Class C share price fell \$21.73, or 25%, to close at \$65.47 per share on November 3, 2021.

4 The complaints allege that throughout the Class Period, Defendants made materially false
 5 and/or misleading statements, as well as failed to disclose material adverse facts about the
 6 Company’s business, operations, and prospects. Specifically, Defendants failed to disclose to
 7 investors: (1) that, despite operational improvements, the Company experienced significant
 8 unpredictability in forecasting home prices for its Zillow Offers business; (2) that such
 9 unpredictability, as well as labor and supply shortages, led to a backlog of inventory; (3) that, as a
 10 result of the foregoing, the Company was reasonably likely to wind-down the Zillow Offers
 11 business, which would have a material adverse impact on its financial results; and (4) that, as a
 12 result of the foregoing, Defendants’ positive statements about the Company’s business, operations,
 13 and prospects were materially misleading and/or lacked a reasonable basis.

14 III. PROCEDURAL HISTORY

15 On November 16, 2021, plaintiff Dibakar Barua commenced a securities fraud class action
 16 against Zillow and certain of its officers, captioned *Barua v. Zillow Group, Inc.*, Case No. 2:21-
 17 cv-01551 (the “*Barua Action*”). It is brought on behalf of persons and entities that purchased or
 18 otherwise acquired Zillow securities between February 10, 2021 and November 2, 2021.

19 On November 19, 2021, plaintiff Steven Silverberg filed a substantially similar class
 20 action, captioned *Silverberg v. Zillow Group, Inc.*, Case No. 2:21-cv-01567 (the “*Silverberg*
 21 Action”). It is also brought on behalf of persons and entities that purchased or otherwise acquired
 22 Zillow securities between February 10, 2021 and November 2, 2021.

23 On January 6, 2022, plaintiff Aaron Winston Hillier filed a substantially similar class
 24 action, captioned *Hillier v. Zillow Group, Inc.*, Case No. 2:22-cv-00014 (the “*Hillier Action*,” and
 25 together with the *Barua* and *Silverberg* Actions, the “Related Actions”). It is brought on behalf of
 26 persons and entities that purchased or otherwise acquired Zillow securities during the Class Period.
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1 **IV. ARGUMENT**

2 **A. The Related Actions Should Be Consolidated**

3 Consolidation of related cases is appropriate where, as here, the actions involve common
 4 questions of law and fact, and therefore, consolidation would avoid unnecessary cost, delay, and
 5 overlap in adjudication. *See Fed. R. Civ. P. 42(a).*

6 Each of the Related Actions presents similar factual and legal issues, as they all involve
 7 the same subject matter and present the same legal issues. Each action alleges violations of the
 8 Exchange Act, each presents the same or similar theories for recovery, and each is based on the
 9 same allegedly wrongful course of conduct. Because these actions arise from the same facts and
 10 circumstances and involve the same subject matter, consolidation of these cases under Federal
 11 Rule of Civil Procedure 42(a) is appropriate. *See e.g., Sabbagh v. Cell Therapeutics, Inc.*, 2010
 12 WL 3064427, at *3 (W.D. Wash. Aug. 2, 2010) (consolidating cases “alleging the same violations
 13 of federal securities laws against the same defendants during substantially the same period of
 14 time”).

15 **B. McCormick Should Be Appointed Lead Plaintiff**

16 The PSLRA provides the procedure for selecting a lead plaintiff in class actions brought
 17 under the federal securities laws. The PSLRA provides a “rebuttable presumption” that the “most
 18 adequate plaintiff” – *i.e.*, the plaintiff most capable of adequately representing the interests of the
 19 Class – is the person or group that:

- 20 (aa) has either filed the complaint or made a motion in response to a notice . . .;
- 21 (bb) in the determination of the Court, has the largest financial interest in the relief
 sought by the class; and
- 22 (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil
 Procedure.

24 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

25 The presumption in favor of appointing a plaintiff or group of plaintiffs as lead plaintiff
 26 may be rebutted only upon proof “by a purported member of the plaintiff class” that the
 27 presumptively most adequate plaintiff:

- (aa) will not fairly and adequately protect the interest of the class; or
- (bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

15 U.S.C. § 78u-4(a)(3)(b)(iii)(II).

As set forth below, McCormick has complied with all of the PSLRA’s requirements and satisfies all of the PSLRA criteria to be appointed lead plaintiff. McCormick, to the best of his knowledge, has the largest financial interest in this litigation, satisfies the relevant requirements of Federal Rule of Civil Procedure 23, and is not aware of any unique defenses defendants could raise against him that would render him inadequate to represent the Class. Accordingly, McCormick respectfully submits that he should be appointed lead plaintiff. *See In re Cavanaugh*, 306 F.3d 726, 730 (9th Cir. 2002) (“If the plaintiff with the largest financial stake in the controversy provides information that satisfies these requirements, he becomes the presumptively most adequate plaintiff”).

1. McCormick's Motion Is Timely

On November 16, 2021, pursuant to Section 21D(a)(3)(A)(I) of the PSLRA, notice was published in connection with this action. *See* Nivison Decl., Ex. A. Therefore, McCormick had sixty days (i.e., until January 18, 2022), to file a motion to be appointed as Lead Plaintiff. As a purchaser of Zillow securities during the Class Period, McCormick is a member of the proposed class and has timely filed a motion for appointment as lead plaintiff within sixty days of the notice, in compliance with the PSLRA. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(aa).

Additionally, as set forth in his PSLRA certification, McCormick attests that he has reviewed the complaint, adopts the allegations therein, and is willing to serve as a representative of the class. Nivison Decl., Ex. B. Accordingly, McCormick satisfies the first requirement to serve as Lead Plaintiff for the class.

2. McCormick Has The Largest Financial Interest In The Relief Sought By The Class

The PSLRA requires a court to adopt the rebuttable presumption that “the most adequate plaintiff . . . is the person or group of persons that . . . has the largest financial interest in the relief

1 sought by the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii). At the time of this filing, McCormick
 2 believes that he has the largest financial interest among Class members who filed timely
 3 applications for appointment as lead plaintiff and accordingly is presumed to be the “most adequate
 4 plaintiff.”

5 McCormick purchased Zillow securities during the Class Period at prices alleged to be
 6 artificially inflated by Defendants’ misstatements and omissions and, as a result, suffered financial
 7 harm. See Nivison Decl., Ex. C. To the best of his knowledge, McCormick is not aware of any
 8 other Class member that has filed a motion for appointment as lead plaintiff who claims a larger
 9 financial interest. As such, McCormick believes he has the “largest financial interest in the relief
 10 sought by the Class,” and thus satisfies the second PSLRA requirement to be appointed as lead
 11 plaintiff for the Class.

12 **3. McCormick Satisfies The Requirement Of Rule 23 Of The Federal
 13 Rules Of Civil Procedure**

14 Section 21D(a)(3)(B)(iii)(I)(cc) of the PSLRA further provides that, in addition to
 15 possessing the largest financial interest in the outcome of the litigation, the lead plaintiff must
 16 otherwise satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure. *See*
 17 *Cavanaugh*, 306 F.3d at 729-30. Rule 23(a) generally provides that a class action may proceed if
 18 the following four requirements are satisfied:

19 (1) the class is so numerous that joinder of all members is impracticable, (2) there
 20 are questions of law or fact common to the class, (3) the claims or defenses of the
 21 representative parties are typical of the claims or defenses of the class, and (4) the
 22 representative parties will fairly and adequately protect the interest of the class.

23 Fed. R. Civ. P. 23(a).

24 In making its determination that putative lead plaintiffs satisfy the requirements of Rule
 25 23, the Court need not raise its inquiry to the level required in ruling on a motion for class
 26 certification; instead, “[a]t the lead plaintiff stage, . . . all that is required is a *prima facie* showing
 27 that the lead plaintiff’s claims are typical and adequate.” *In re Coinstar Inc. Sec. Litig.*, 2011 WL
 13233156, at *2 (W.D. Wash. Apr. 19, 2011).

1 **a) McCormick's Claims Are Typical**

2 Rule 23(a)(3) of the Federal Rules of Civil Procedure requires that, “the claims . . . of the
 3 representative parties” be “typical of the claims . . . of the class.” A proposed lead plaintiff’s claims
 4 are typical of the class when the proposed lead plaintiff’s claims and injuries arise from the same
 5 events or course of conduct that gives rise to other class members’ claims and plaintiff’s claims
 6 are based on the same legal theory. *See id.* Under Rule 23 a lead plaintiff’s claims are typical “if
 7 he is reasonably coextensive with those of the absent class members; they need not be substantially
 8 identical.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).

9 Here, McCormick’s claims are typical of the claims asserted by the proposed Class. Like
 10 all members of the Class, McCormick purchased Zillow securities during the Class Period and
 11 suffered losses as a result of his transactions. Like all members of the Class, McCormick alleges
 12 that defendants violated federal securities laws by disseminating materially misleading statements
 13 concerning Zillow’s operations and financial prospects. McCormick’s losses, like the losses
 14 suffered by all other members of the Class, arise from the artificial inflation of Zillow securities
 15 caused by defendants’ alleged misrepresentations and omissions. Accordingly, McCormick’s
 16 interests and claims are typical of the interests and claims of the Class.

17 **b) McCormick is an Adequate Representative**

18 The Rule 23(a)(4) adequacy requirement is satisfied where it is established that a
 19 representative party “will fairly and adequately protect the interests of the class.” Accordingly,

20 The Ninth Circuit has held that representation is “adequate” when counsel for the
 21 class is qualified and competent, the representative’s interests are not antagonistic
 22 to the interests of absent class members, and it is unlikely that the action is
 23 collusive.

24 *Takeda v. Turbodyne Techs., Inc.*, 67 F. Supp. 2d 1129, 1137 (C.D. Cal. 1999) (citing *In re*
 25 *Northern Dist. of Cal., Dalkon Shield IUD Prod. Liab. Litig.*, 693 F.2d 847, 855 (9th Cir. 1982));
 26 see also *Schonfield v. Dendreon Corp.*, 2007 WL 2916533, at *4 (W.D. Wash. Oct. 4, 2007)
 27 (Adequacy requires a demonstration that: “(1) the proposed lead plaintiff’s interests are in common
 with, and not antagonistic to, those of the class; and (2) proposed lead plaintiff’s counsel are
 qualified, experienced and generally able to conduct the litigation.”).

1 Here, McCormick easily satisfies the adequacy requirements. McCormick's financial
 2 interest demonstrates that he has sufficient incentive to ensure vigorous advocacy, and "[t]here are
 3 no facts suggesting any actual or potential conflict of interest or other antagonism exists between
 4 [McCormick] and other Class members." *Frias v. Dendreon Corp.*, 835 F. Supp. 2d 1067, 1076
 5 (W.D. Wash. 2011). Moreover, McCormick has retained competent and experienced counsel with
 6 the resources and expertise to efficiently and effectively prosecute this action. *See* Nivison Decl.,
 7 Ex. D (the firms' résumé). McCormick resides in Placer County, California. He has been a sales
 8 representative for PING Inc. for 32 years and has a Bachelor's of Science degree in Business
 9 Administration. He has been managing his investment portfolio for approximately 7 years. In
 10 addition, McCormick is not aware of any conflict between his claims and those asserted on behalf
 11 of the Class.

12 **C. The Court Should Approve Lead Plaintiff's Choice Of Counsel**

13 The PSLRA vests authority in the lead plaintiff to select and retain counsel, subject only
 14 to approval of the Court. *See* 15 U.S.C. § 78u-4(a)(3)(B)(v). The Court should not disturb the lead
 15 plaintiff's choice of counsel unless it is "necessary to protect the interests of the class." 15 U.S.C.
 16 § 78u-4(a)(3)(B)(iii)(II)(aa). Here, McCormick selected Glancy Prongay & Murray LLP as lead
 17 counsel for the class and Rossi Vucinovich, P.C. as liaison counsel. Glancy Prongay & Murray
 18 LLP possesses extensive experience in securities litigation and has successfully prosecuted
 19 numerous securities fraud class actions on behalf of injured investors. *See* Nivison Decl., Ex. D.
 20 GPM will consult Rossi Vucinovich, P.C. regarding compliance with local rules. Thus, the Court
 21 may be assured that in the event this Motion is granted, the members of the class will receive the
 22 highest caliber of legal representation. Accordingly, the Court should approve McCormick's
 23 selection of counsel.

24 **V. CONCLUSION**

25 For the foregoing reasons, Lee McCormick respectfully asks the Court to grant his motion
 26 and enter an Order: (1) consolidating the Related Actions; (2) appointing McCormick as Lead
 27 Plaintiff; (3) approving Glancy Prongay & Murray LLP as Lead Counsel and Rossi Vucinovich,

1 P.C. as Liaison Counsel for the Class; and (4) granting such other and further relief as the Court
2 may deem just and proper.

3 DATED: January 18, 2022

Respectfully submitted,

4 **ROSSI VUCINOVICH, P.C.**

5 By: /s/ Benjamin T.G. Nivison

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PROOF OF SERVICE BY ELECTRONIC POSTING

I, the undersigned say:

I am not a party to the above case, and am over eighteen years old. On January 18, 2022, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Western District of Washington, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 18, 2022, at Seattle, Washington.

/s/ Benjamin T.G. Nivison
Benjamin T.G. Nivison